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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

No. CR-08-00611-02-PHX-DGC

Plaintiff,

ORDER

V.

Carlos Alvarez-Espinoza,

Defendant.

Defendant Carlos Alvarez-Espinoza is an inmate with the Federal Bureau of Prisons (“BOP”). Due to ongoing health concerns from the COVID-19 pandemic, Defendant has filed a second motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Doc. 464. The motion is fully briefed. Docs. 467, 476. For reasons stated below, the Court will deny the motion.

I. Background.

Defendant received a 300-month prison sentence after a jury convicted him of hostage taking and harboring illegal alien offenses in June 2009. Docs. 221, 434. Defendant is confined at the medium-security federal correctional institution in Victorville, California (“FCI-Victorville”). *See* Federal BOP, *Find an Inmate*, https://www.bop.gov/mobile/find_inmate/byname.jsp#inmate_results (last visited September 22, 2020). His projected release date is February 1, 2030. *See id.*

1 Defendant filed a motion for compassionate release on May 18, 2020. Doc. 451.
 2 The Court denied the motion because Defendant had filed no request for compassionate
 3 release with the warden of FCI-Victorville. Doc. 461. On June 4, 2020, Defendant
 4 requested that the warden consider him for compassionate release. Doc. 464 at 13-15.
 5 Defendant therefore has exhausted his administrative remedies with respect to the present
 6 motion, which was filed August 10, 2020. *See* 18 U.S.C. § 3582(c)(1)(A) (a prisoner may
 7 bring a motion for compassionate release 30 days after the warden receives the
 8 administrative request).

9 On August 13, 2020, the Federal Public Defender's Office filed a notice regarding
 10 Defendant's motion pursuant to General Order 20-28. Doc. 465. The notice states that
 11 appointment of counsel is not warranted because Defendant's motion fails to state a *prima
 facie* claim for relief under § 3582(c)(1)(A). *Id.* at 1. Specifically, the motion "reveals no
 12 mention of any health conditions or other extraordinary and compelling reasons for
 13 granting a sentence reduction." *Id.* at 2.

14 The government filed a response to the motion on August 24, 2020, arguing that
 15 Defendant has no medical condition that puts him at higher risk for severe illness from a
 16 COVID-19 infection and that he otherwise has failed to show extraordinary and compelling
 17 reasons warranting compassionate release. Doc. 467 at 1. The government further argues
 18 that Defendant should not be released early because he poses a danger to the community.
 19 *Id.* at 9-10. Defendant filed a reply on September 9, 2020. Doc. 476.

20 **II. Compassionate Release Under 18 U.S.C. § 3582(c) and the First Step Act.**

21 Compassionate release is governed by 18 U.S.C. § 3582(c), as amended by the First
 22 Step Act of 2018. Pub. L. No. 115-391, 132 Stat. 5194, at 5239-40 (2018); *see United
 23 States v. Parker*, No. 2:98-CR-00749-CAS-1, 2020 WL 2572525, at *4 (C.D. Cal. May 21,
 24 2020) (citing *United States v. Willis*, 382 F. Supp. 3d 1185, 1187 (D.N.M. 2019)). Section
 25 3582(c) previously provided for compassionate release only upon motion of the BOP
 26 Director. *See id.*; *United States v. McCollough*, No. CR-15-00336-001-PHX-DLR, 2020
 27 WL 2812841, at *1 (D. Ariz. May 29, 2020). The First Step Act amended § 3582(c) to

1 permit motions for compassionate release by prisoners. *See id.*; *United States v. Baye*,
 2 No. 3:12-CR-00115-RCJ, 2020 WL 2857500, at *8 (D. Nev. June 2, 2020) (“The First
 3 Step Act materially altered § 3582(c)(1)(A) as previously only the [BOP] Director could
 4 bring a motion for compassionate release.”) (comparing § 3582(c)(1)(A) (2018) with
 5 § 3582(c)(1)(A) (2002)).

6 Specifically, amended § 3582(c) provides:

7 The court may not modify a term of imprisonment once it has been imposed
 8 except that –

9 (1) in any case –

10 (A) the court, upon motion of the Director of the [BOP], or upon motion of
 11 the defendant after the defendant has fully exhausted all administrative
 12 rights[,] . . . may reduce the term of imprisonment (and may impose a term
 13 of probation or supervised release with or without conditions that does not
 14 exceed the unserved portion of the original term of imprisonment), after
 15 considering the factors set forth in [18 U.S.C §] 3553(a) to the extent that
 16 they are applicable, if it finds that –

17 (i) extraordinary and compelling reasons warrant such a reduction . . . and
 18 that such a reduction is consistent with applicable policy statements issued
 19 by the Sentencing Commission.

20 18 U.S.C. § 3582(c).¹

21 While § 3582(c) does not define “extraordinary and compelling reasons,” the
 22 Sentencing Commission has identified four categories that may qualify: serious medical
 23 conditions, advanced age, family circumstances, and a catch-all “other reasons.” U.S.S.G.
 24 § 1B1.13, application note 1(A)-(D); *see United States v. Esparza*, No. 17-cr-1101-JAH,

25 ¹ “Although relief under the statute is commonly referred to as ‘compassionate
 26 release,’ such relief is not limited to immediate release, but includes a reduction in
 27 sentence.” *United States v. Marks*, No. 03-cr-06033-L, 2020 WL 1908911, at *3 n.3
 28 (W.D.N.Y. Apr. 20, 2020); *see also United States v. Young*, No. 2:00-cr-0002-1, 2020 WL
 1047815, at *6 (M.D. Tenn. Mar. 4, 2020) (“[A] majority of the district courts that have
 considered the issue have likewise held, based on the First Step Act, that they have the
 authority to reduce a prisoner’s sentence upon the court’s independent finding of
 extraordinary or compelling reasons.”) (citations omitted).

1 2020 WL 2838732, at *2 (S.D. Cal. June 1, 2020); *United States v. Hays*, No. CR 18-
 2 00088-KD-N, 2020 WL 1698778, at *2 (S.D. Ala. Apr. 7, 2020).²

3 The following medical conditions constitute extraordinary and compelling reasons
 4 justifying compassionate release:

5 (i) The defendant is suffering from a terminal illness (i.e., a serious and
 6 advanced illness with an end of life trajectory)[.]

7 (ii) The defendant is—

8 (I) suffering from a serious physical or medical condition,

9 (II) suffering from a serious functional or cognitive impairment, or

10 (III) experiencing deteriorating physical or mental health because of
 the aging process,

11 that substantially diminishes the ability of the defendant to provide self-care
 12 within the environment of a correctional facility and from which he or she is
 not expected to recover.

13 § 1B1.13, application note 1(A).

14 **III. Defendant's Motion.**

15 Defendant asserts that on July 2, 2020, FCI-Victorville was locked down after more
 16 than 200 inmates tested positive for COVID-19. Doc. 464 at 2. As of September 22, 2020,
 17 more than one-third of the inmates – 357 out of a population of 986 – have tested positive
 18 for COVID-19. *See* Federal BOP, *COVID-19 Cases*, <https://www.bop.gov/coronavirus/index.jsp> (Victorville Medium I FCI).³ One inmate has died, and 319 have recovered from

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23 ² There is no policy statement specifically applicable to motions for compassionate
 24 release filed by prisoners under the FSA. By its terms, the current policy statement applies
 25 to motions for compassionate release filed by the BOP Director. U.S.S.G. § 1B1.13. The
 26 Sentencing Commission has not amended the current policy statement since the FSA was
 27 enacted, nor has it adopted a new policy statement applicable to motions filed by
 defendants. *See United States v. Beck*, 425 F. Supp. 3d 573, 579 (M.D.N.C. 2019) (citing
United States v. Gross, No. 2:04-CR-32-RMP, 2019 WL 2437463, at *2 (E.D. Wash.
 June 11, 2019)). While the current policy statement may not constrain the Court's
 independent assessment of whether "extraordinary and compelling reasons" warrant a
 sentence reduction under § 3582(c)(1)(A)(i), it does provide helpful guidance. *See id.*

28 ³ *See also* Federal BOP, *FCI Victorville Medium I*, <https://www.bop.gov/locations/institutions/vim/> (listing the total population as 986 inmates) (last visited Sept. 22, 2020).

1 COVID-19. *See id.* Defendant asserts that “waiting for [him] to test positive would be a
 2 waste of time or maybe [his] life.” Doc. 464 at 3.

3 Defendant’s concern about the spread of COVID-19 within FCI-Victorville is well
 4 founded. And while the Court is sympathetic to that concern, Defendant’s motion must be
 5 denied because he has not shown the requisite extraordinary and compelling reasons for
 6 compassionate release under § 3582(c)(1)(A)(i). Defendant is 31 years old. *See* Doc. 429
 7 at 4. He has identified no medical condition that puts him at higher risk for severe illness
 8 from a COVID-19 infection. *See* Docs. 464, 476.

9 Defendant’s general concern about possibly contracting the virus is not similar to
 10 what the Commission has articulated as criteria for compassionate release. *See Hays*, 2020
 11 WL 1698778, at *3. This Court has “join[ed] other [c]ourts in the Ninth Circuit and across
 12 the country in finding that requests for compassionate release [based on] the presence of
 13 COVID-19 alone does not create extraordinary and compelling reasons for release.”
 14 *United States v. Partida*, No. CR1708260001PCTDGC, 2020 WL 3050705, at *6 (D. Ariz.
 15 June 8, 2020) (quoting *Esparza*, 2020 WL 2838732, at *2 (citing cases)); *see also United*
 16 *United States v. Atari*, No. 2:17-CR-00232-JAM, 2020 WL 2615030, at *2 (E.D. Cal. May 22,
 17 2020) (“Courts have found general concerns about possible exposure to COVID-19 ‘do not
 18 meet the criteria for extraordinary and compelling reasons for a reduction in sentence set
 19 forth in the Sentencing Commission’s policy statement.’”) (citations omitted).

20 What is more, Defendant has failed to show that he “is not a danger to the safety of
 21 any other person or to the community, as provided in 18 U.S.C. § 3142(g).”
 22 § 3582(c)(1)(A); *see United States v. Zazweta*, No. 4:16-CR-176-BLW, 2020 WL
 23 5577876, at *1 (D. Idaho Sept. 17, 2020). Defendant committed hostage taking by seizing,
 24 detaining, and threatening to kill the victims at gunpoint. Docs. 429 at 5, 467 at 10. Given
 25 the seriousness and nature of these crimes, the Court cannot conclude that he no longer
 26 poses a danger to the community if released.

27 In summary, the Court will deny Defendant’s motion for compassionate release.
 28 *See Zazweta*, 2020 WL 5577876, at *1 (“[T]he defendant has not carried her burden of

1 showing ‘extraordinary and compelling reasons’ that would support a compassionate
2 release and the Court cannot find that she would not be a danger to the community if
3 released. Consequently, her motion will be denied.”); *United States v. Gotti*, No. 02-CR-
4 743, 2020 WL 497987, at *6 (S.D.N.Y. Jan. 15, 2020) (release was inappropriate regardless
5 of extraordinary and compelling circumstances because the defendant posed a continuing
6 danger to the public).⁴

7 **IT IS ORDERED** that Defendant's motion for compassionate release (Doc. 464) is
8 **denied.**

9 Dated this 23rd day of September, 2020.

David G. Campbell

David G. Campbell
Senior United States District Judge

27 ⁴ Given this ruling based on Defendant's failure to establish the requisite
28 extraordinary and compelling reasons and to show that he poses no danger to the public,
the Court need not decide whether the factors set forth in 18 U.S.C. § 3553(a) support
compassionate release. See Docs. 464 at 4-6, 467 at 10.